

a disclaimer during the agency contact, consistent with the proscription described in the White House contacts policy memorandum relating to agency rule-making matters. *See supra* at 203. Apparently, she did not feel the Hudson circumstances were ambiguous enough to merit contacting Counsel's Office, as advised by the policy memo on adjudications, to resolve any question about the definition of matters falling within the policy's terms.<sup>338</sup>

For his part, Ickes said he did not think there was a "black letter or specific rule or line" governing such contacts.<sup>339</sup> Nonetheless, he said the general practice in his office was to check with Counsel's Office prior to contacting an agency about even a "quasi-judicial" matter, and that he felt the nature of the Hudson situation and her own work habits would have led Jennifer O'Connor to confer with Counsel's Office before making any calls to Interior.<sup>340</sup> Yet, he likewise made no effort to ensure that his staff sought the advice of Counsel's Office before handling the requests for contact with Interior on behalf of the DNC and Patrick O'Connor.<sup>341</sup>

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<sup>338</sup>Ms. O'Connor stated that she probably would have called Counsel's Office first and proceeded differently if Ickes asked her to determine what role he would play in the matter. Because she believed that he only wanted to know the status of the application, however, O'Connor said she felt she could call the agency directly, without prior approval from White House counsel.

<sup>339</sup>Ickes G.J. Test. at 45-48. Ickes said he saw no problem with contacting an agency about the status of a pending matter, regardless of the nature of the matter, but he testified: "My impression was that if it involved rule making or an adjudicatory issue, White House Counsel's Office certainly wanted us to contact it before making contact with the agency and, as far as I know, that was followed by and large." *Id.* at 48.

<sup>340</sup>Ickes G.J. Test. at 46-48, 252-53. At the time of his testimony, Ickes was unaware that Ms. O'Connor did not confer with Counsel's Office before making her calls to Interior in the Hudson matter.

<sup>341</sup>Indeed, as to his office's contacts with Interior about Hudson, Ickes testified that he did not think that it would have been inappropriate for Jennifer O'Connor to have informed Interior staff that the status check on Hudson was being made on behalf of Fowler, or even for her to

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